IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 14475 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE KSHITIJ R.VYAS

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

RABARI MAGANBHAI VASHRAMBHAI & 4 - Petitioner(s)

Versus

DY.COLLECTOR & 51 – Respondent(s)

==========

Appearance :

MR PR NANAVATI for Petitioner No(s).: 1,2,3,4,5.
MR HL JANI, AGP for Respondent No(s).: 1,2.
RULE SERVED BY DS for Respondent No(s).: 1,2.
MR JASWANT K SHAH for Respondent No(s).: 3.
MR MEHUL H RATHOD for Respondent No(s).:
4 - 4,5 - 5,
6 - 6,7 - 7, 8,
9 - 9, 10,11 - 11, 12,
13 - 13,14 - 14, 15, 16,17 - 17, 18,
19 - 19, 20, 21, 22, 23,
24, 25, 26, 27, 28, 29,

30 - 30,31 - 31,32 - 32,
33 - 33,34 - 34, 35, 36,37 - 37,
38 - 38, 39, 40, 41, 42, 43, 44,
45, 46, 47, 48, 49, 50, 51,52.
- for Respondent No(s).: 0, 0, 0, 0, 0,0.

==========

CORAM : HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and
HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date : 04/08/2005

ORAL JUDGMENT

(Per : HON'BLE MR.JUSTICE AKSHAY H.MEHTA)

1. The petitioners in this petition, which is in the nature of public interest litigation, have challenged three orders of the Deputy Collector, Palanpur all dated 9/8/2004 allotting lands in question to respondents no. 4 to 53. The challenge in this petition is limited to the lands situated in Rasana Nana village, Taluka Deesa, District Banaskantha. It is the say of the petitioners that the land allotted to the said respondents is earmarked as pasturage for the village cattle and with the allotment of these lands to the said respondents, the cattle will not have any place to graze and their plight will be very miserable.

1.1. It appears that on account of establishment of Agricultural University at Dantivada certain lands belonging to the said respondents came to be acquired under the provisions of the Land Acquisition Act [hereinafter referred to as the

'Act']. Such persons who were then rendered landless, were sought to be rehabilitated as per the policy existing then by the Government. However, certain persons were left out of the said benefit and, therefore, they had approached this Court by way of filing petitions under Article 226 of the Constitution of India. In those petitions, being Special Civil Applications No. 9311/2003, 14560/2003 and 5146/2004 ultimately by orders dated 25/9/2003, 14/10/2003 and 26/4/2004 directions came to be issued by the Learned Single Judges of this Court requiring the Deputy Collector, Palanpur to consider the claim of these persons and to allot them suitable land for agriculture purpose, if they were found eligible for the same. In view of the aforesaid direction of this Court, the Deputy Collector after making a detailed inquiry and considering the claims of the persons who were not allotted the alternative land and also by taking into consideration various Government resolutions, decided to allot the lands in question to respondents no. 4 to 53 and those who were not found eligible were denied the benefit. Having been aggrieved by the said decision, the present petitioners who are residents of village RasanaNana have now approached this Court.

2. We have heard Mr. PR Nanavati, learned advocate for the petitioners, Mr. MH Rathod, learned advocate for respondents no. 4 to 53, Mr. HL Jani, Ld. AGP for respondents no. 1 and 2 and Mr. Jashwant K Shah, learned advocate for

respondent no. 3. In the submission of Mr. Nanavati, though this land is converted into pesture land and it is meant for the cattle of village Rasana Nana, it has been ordered to be allotted to the respondents no. 4 to 53 which is not permissible in law. He has submitted that there is other land available for this purpose and the cattle of this village cannot be deprived of the place of their grazing. He has also placed reliance on decision rendered by this Court laying down that before transferring the pasture land, the persons of the concerned village are required to be heard. It is submitted by Mr. Nanavati that no such opportunity of hearing has been granted to the people of village Rasana Nana by the Deputy Collector. As against that, Mr. MH Rathod, learned advocate for respondents no. 4 to 53 has submitted that after due scrutiny, the Deputy Collector has found them eligible for allotment of the alternative land for agriculture purpose since their original land has already been acquired under the provisions of the Act for a public purpose, namely establishing premises for Agricultural University at Dantivada. In view of the same, the petitioners now cannot object to grant of the said land to them. He has further submitted that though this petition is in the nature of public interest litigation, in reality it is not so because the petitioners have their personal vested interest in this land and, therefore, on that count also the reliefs claimed by the petitioners cannot be granted.

2.1. So far Mr. Jani, Ld. AGP is concerned, he has supported the orders of the Deputy Collector on the ground that as per the policy respondents no. 4 to 53 have been allotted land and that too after making proper inquiry and the petitioners, therefore, cannot have any objection to the same. In his submission, the land in question is not a pasture land but a waste land of the ownership of the Government.

3. Having heard learned advocates for the parties and having gone through the averments made in the petition and also the replies thereto, it becomes clear to us that respondents no. 4 to 53 have been granted the benefit of alternative agricultural land under the scheme by the Government since their original lands were acquired for the establishment of Agricultural University. It is the say of respondents that with the acquisition of the said land they were rendered landless and they were deprived of their livelihood. Since their claim was in consonance with the provisions of the policy adopted by the Government for rehabilitation, the said lands have been granted to them on certain terms and conditions which have been incorporated in the orders of the Deputy Collector. The orders show that at the time of considering the claim, various Government resolutions, orders, circulars as well as judgments of this Court as well as the correspondence in this behalf have been referred to by the Deputy Collector and after assigning proper

reasons, the lands have been allotted to respondents no. 4 to 53. The orders also show that those who have not been found eligible for the said lands have been denied the benefit.

3.1. It is submitted by Mr. Nanavati that this is a pasture land. However, there is hardly any material on record for us to come to conclusion that the land in question is pasture land. On the contrary, it appears from the impugned orders that certain lands were reserved for rehabilitation of the persons who were likely to be adversely affected by the acquisition of the land for Agricultural University. Such lands are situated at village Rasana Mota and Rasana Nana. In the present petition the challenge is to the land situated in village Rasana Nana. When this is the position, it cannot be said that village Rasana Nana is deprived of its pasture land since it has now been allotted to respondent no. 4 to 53. So far Mr. Nanavati's argument to the effect that before allotting the said land to the said respondents, the Deputy Collector did not give residents of village Rasana Nana a hearing and, therefore, also the impugned orders are bad in law on account of violation of principle of natural justice is concerned, he has placed reliance on the decision rendered by the Learned Single Judge of this Court in the case of PACHHAT VARGA SHRAMJIVI SAMUDAIK SAHAKARI KHEDUT COOP. SOCIETY LTD. V/s. HARIBHAI MEVABHAI & ORS. rendered in Special Civil

Application No. 6051 of 1986, decided on 5/10/1993, which is also reported in 35 (1) GLR p. 1995. In the said judgment it has been held by the Learned Single Judge that considering the nature of the pasture land, if it is to be disposed of under section 37 of the Bombay Land Revenue Code [hereinafter referred to as the 'Code'], the Collector is required to have due regard to such special assignment of land. According to the learned Judge, when the land is earmarked for the purpose of pasturage under section 38 of the Code, there is existence of right in favour of the villagers under section 39 of the Code and they are to be given an opportunity of having their say in the matter whenever the nature of the land is to be changed, since it amounts to extinguishing the right of the villagers. This judgment, however, cannot be of any aid to Mr. Nanavati for two reasons, firstly because as already stated above, we have found that there is no material on record to show that the land in question is pasturage, but on the contrary it transpires from the order of the Deputy Collector that it was reserved for the persons who were likely to be adversely affected on account of the establishment of the Agricultural University at Dantivada and secondly because this decision was carried to the Apex Court by the aggrieved party and the Apex Court by its decision reported in AIR 1996 SC at page 2578 has reversed it. Thus, law laid down by the Learned Single Judge is no longer a good law in view of the decision of the Apex Court.

3.2. It is incidentally submitted by Mr. Nanavati that even if the said respondents are allowed to retain the land by this Court by dismissing the petition, in all probabilities they will not use it for the agricultural purpose but they will sell it for non-agricultural use. In view of this submission, we have perused the conditions imposed by the Deputy Collector in his order dated 9/8/2004. One of the conditions shows that the land would be treated as old tenure land which would mean that without even prior permission of the concerned authority, the concerned respondents would be in a position to convert it into non-agricultural land and thereafter sell it. Though Mr. Rathod, learned advocate for those respondents has stated before us that for the present these respondents do not contemplate either to convert into N A land or even to sell it. He has, however, reservations in frankly stating before the Court that the said respondents will not also do it in near future. In view of the same, we are of the opinion that apart from the terms and conditions that have been prescribed under the said order, this Court, since this is a public interest litigation, is within its bounds to impose certain additional conditions with a view to ensure that the land which has been allotted for the agricultural use and the land which is a public land should not be utilized by the said respondents for making unjust enrichment. It is stated before us that though all the formalities are over, the physical possession of the land is still to be given to respondents no. 4 to 53. In view of the same, over and above the

conditions contained in the order of the Deputy Collector, we impose the following conditions :-

I. The respondents no. 4 to 53 will not convert the land into N.A. But they will use the land only for agriculture purpose.

II. The respondents no. 4 to 53 shall not transfer the land either by sale or in any other manner directly or indirectly by executing power of attorney, to any third party and even if such power of attorney is already given in favour of the third party, the concerned respondents shall revoke the same before receiving the possession.

The aforesaid conditions imposed by this Court will remain in force for a period of 15 years from the date of the possession of the land.

The Deputy Collector, Palanpur is directed to see that these respondents give undertaking in writing to comply with the aforesaid conditions imposed by this Court. Unless such undertaking is given, the possession shall not be granted to such respondents. The Deputy Collector is further directed to ensure before giving possession of land that no deed of power of attorney is executed by any of the

respondents in favour of any third party. If it is found to be so, he shall forthwith call upon the said respondent to revoke it and render it ineffective. He is further directed that unless there is strict compliance of the aforesaid terms and conditions by the said respondents, he shall not put them into possession of the land in question.

At this stage, it is stated by Mr. Rathod that there is encroachment on the land in question caused by the petitioners and/or their family members. The said fact is vehemently denied by Mr. Nanavati. However, we direct the Deputy Collector that before handing over possession of the land to those respondents, he shall see to it that the land is free from encroachment and if there is any encroachment found on such land either caused by the petitioners or their family members or any other persons, the same shall be removed by him.

The Deputy Collector is directed to complete the exercise within six weeks from the date of receipt of writ of this order or certified copy of the judgment, whichever is earlier.

At this stage request is made on behalf of Mr. Nanavati to stay the process of handing over possession of the land in favour of respondents no. 4 to 53 for a period of six weeks. We do not find any justifying reasons to do so. Hence the

request is rejected.

Since we do not find any merit in the petition, we dismiss it with no order as to costs. Rule discharged. Interim relief granted earlier stands vacated.

[Kshitij R Vyas, J.]

[Akshay H Mehta, J.]

* Pansala.